

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

WASTE MANAGEMENT OF WASHINGTON, INC.
d/b/a WASTE MANAGEMENT NORTHWEST

Employer

and

TEAMSTERS LOCAL 174, affiliated with
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Cases 19-RC-13951
19-RC-13983
19-RC-13984

Petitioner

SECOND SUPPLEMENTAL DECISION ON CHALLENGED BALLOT

The election in this matter was conducted on August 16 and 17, 2000¹. The Tally of Ballots showed two determinative challenges, Eric Booth and Michael Ruthruff.

The Hearing Officer, following a hearing and briefs by the parties, issued her Report and Recommendations on October 5, 2000. The Employer filed timely exceptions concerning the Hearing Officer's resolution of the Ruthruff challenge.²

The following chronology is necessary to resolve this matter.³ The Decision and Direction of Election issued on July 19. The Decision used the standard boilerplate language for determining eligibility, including

those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period

Ruthruff had worked in what became the Unit prior to June 13⁴, but on that date he began work at another, non-Unit Employer site, the Skagit site, some distance

¹ All dates herein are 2000 unless otherwise stated.

² No party excepted to the Hearing Officer's recommendation that Booth be found eligible to vote.

³ For purposes of this decision, I am accepting the Employer's dates, set forth in its Exceptions, unless the contrary is stated.

away from the Unit sites in Woodinville and Fife. He moved there for commuting reasons and because of a conflict with his boss. The transfer had no strings attached. There is no indication it was in any way temporary, or even a “try-out”.

On July 13, Ruthruff found out that his now ex-boss would shortly become his boss again, at Skagit. He discovered, by calling Woodinville, that a position⁵ was available in Woodinville, and gave notice on July 14 at Skagit that he would be transferring back. He was informed by management about this time that he had transferred once before, to Skagit, and he couldn't just transfer again at the drop of a hat; his transfer would take place when the Employer had his position covered in Skagit, his replacement trained, and everything in order to Skagit's satisfaction.

The eligibility cut-off date was July 15.

Ruthruff began work in Woodinville again on August 14.

The election was August 16 and 17. Ruthruff appeared and voted under the Board agent's challenge because he was not on the eligibility list.

The Hearing Officer found that Ruthruff was not eligible to vote because he was not employed in the Unit during the eligibility period, having left a month before the cut-off date. She noted that there was no evidence that his original departure was considered merely temporary, or that he did not intend a permanent transfer to Skagit.

The Employer argues that by July 14 Ruthruff “had secured a job in the bargaining unit.” However, it concedes that his bosses at Skagit told him that he could not be released to assume the Woodinville position until he had trained a replacement, and that this took until August 14. During that period, he continued to work in Skagit. Nevertheless, the Employer argues that by the eligibility date, Ruthruff had found a Unit job, been accepted for it and given notice. All that held him back was the Employer's need to keep him on at Skagit for a few weeks. He amounts to, it is argued, a “temporarily transferred employee” as of the eligibility date – he was performing non-Unit work as of the eligibility date, but he had a “reasonable expectation of returning to Woodinville in the foreseeable future”.

To support this premise, the Employer makes analogies to laid-off employees with a reasonable expectation of recall in the foreseeable future, those on sick leave, and those who have been temporarily transferred out of the Unit. However, in each of those cases, the employee always remained tethered to the Unit. Despite their absence from the Unit, they hadn't cut the cord. Here, Ruthruff left the Unit to go to Skagit, with the mutual expectation that he would be out of the Unit indefinitely. No

⁴ The Employer's brief erroneously states the year was 1999; it was 2000.

⁵ Not his particular former position.

contingencies, no “unless” or “maybe”. Simply put, he changed jobs, to a non-Unit position; the link was cut.

The Employer argues that even though Ruthruff had left on June 13 and was not back physically in the Unit on the eligibility date, he somehow became constructively back in the Unit once he decided to return to Woodinville, or Woodinville decided to accept him, or Skagit decided to release him. Even assuming that at one of these points Ruthruff developed a reasonable expectancy of return to the Unit, it does not change the unassailable fact that he had “permanently” left the Unit before the eligibility date. Unit inclusion as of that date is a prerequisite to voting eligibility. An employee who has never been employed in the Unit, or one who has, but quit, or was fired, or transferred out of the Unit, does not become an eligible voter unless and until they start actual (re)employment, in the Unit, by the eligibility date. See, e.g., *Dyncorp/Dynair Services, Inc.*, 320 NLRB 120 (1995). Accordingly, Ruthruff is not an eligible voter, and his challenge is hereby sustained. No intent, plans or agreement that took place after the eligibility date could change the fact that Ruthruff left the Unit, unconditionally, before the eligibility date.

ORDER

The Employer’s sole exception, to the Hearing Officer’s recommended sustaining of Ruthruff’s challenge, is hereby overruled. Sustaining the challenge means that there is now only one remaining unopened ballot, that of Eric Booth, whose challenge the Hearing Officer recommended overruling. No exception was filed to that recommendation by any party. Based on the Hearing Officer’s recommendation and the lack of exception, I find that Booth is an eligible voter.

Accordingly, I shall direct that a Revised Tally of Ballots issue showing a tally of 37 “yes”, 35 “no” and one remaining challenged ballot (Booth’s). Since his ballot is not determinative, there is no need to destroy the secrecy of his ballot by opening it. Given these circumstances, I shall certify the Petitioner.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots has been cast for Teamsters Local 174, affiliated with International Brotherhood of Teamsters, AFL-CIO, and that it is the exclusive bargaining representative of all employees in the following appropriate unit:

All full-time and regular part-time recycle drivers, transfer drivers and operators, MRF operators, and Port-O-Let drivers and yard employees employed by the Employer at its Woodinville and Fife, Washington, facilities; but excluding all office clerical employees, guards and supervisors as defined by the Act, and all other employees.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street Northwest, Washington, D.C. 20570. This request must be received by the Board in Washington, D.C., by November 6, 2000.

DATED at Seattle, Washington, this 23rd day of October, 2000.

/s/ PAUL EGGERT

Paul Eggert, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

362-6706